

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 2, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2013AP1337**

**Cir. Ct. No. 2013JV22**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**TAYLOR M. S., A MINOR,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Green Lake County:  
MARK T. SLATE, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.<sup>1</sup> Taylor M. S. appeals from the circuit court's waiver of juvenile court jurisdiction. Green Lake county petitioned for an

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

adjudication of delinquency regarding the juvenile Taylor based on her alleged burglary and concealment of stolen property. At the time of the petition, Taylor was sixteen years old, just three months away from her seventeenth birthday. The county petitioned for waiver of juvenile court jurisdiction, noting Taylor's substantial involvement in the juvenile justice system, the many treatments and interventions that had failed to rehabilitate Taylor, and the proximity of Taylor's seventeenth birthday, making continuance in the juvenile justice system likely to fail. The circuit court concluded that it was contrary to the best interests of Taylor or the public for the circuit court with juvenile jurisdiction to hear the case. Taylor petitioned this court for leave to appeal the circuit court's nonfinal order, and we granted leave to appeal. *See* WIS. STAT. RULE 809.50(3).

¶2 At the hearing on the waiver petition, two Green Lake county social workers testified, as well as Taylor's mother. Kim Neuenfeldt, a social worker who did intake for the Department of Health and Human Services and had been involved with Taylor's case, testified regarding Taylor's history, including various programs and treatments in which Taylor had been involved. Neuenfeldt testified that Taylor does not follow through, that she does not have any developmental disability or mental illness and that she was of average to above-average intelligence. "She seems to be a little bit more mature for her age in some ways." Neuenfeldt testified that many treatments had been tried with Taylor, but that Taylor remained noncompliant with conditions of supervision. It is the circuit court's conclusions based on Neuenfeldt's testimony that form the basis of Taylor's appeal.

¶3 WISCONSIN STAT. § 938.18 governs the waiver of juvenile court jurisdiction. The court must first determine that prosecutive merit exists for the

delinquency petition. Sec. 938.18(4). Then the court bases its decision whether to waive jurisdiction on the following criteria, set forth at § 938.18(5):

(a) The personality of the juvenile, including whether the juvenile has a mental illness or developmental disability, the juvenile's physical and mental maturity, and the juvenile's pattern of living, prior treatment history, and apparent potential for responding to future treatment.

(am) The prior record of the juvenile, including whether the court has previously waived its jurisdiction over the juvenile, whether the juvenile has been previously convicted following a waiver of the court's jurisdiction or has been previously found delinquent, whether such conviction or delinquency involved the infliction of serious bodily injury, the juvenile's motives and attitudes, and the juvenile's prior offenses.

(b) The type and seriousness of the offense, including whether it was against persons or property and the extent to which it was committed in a violent, aggressive, premeditated or willful manner.

(c) The adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system, and, where applicable, the mental health system and the suitability of the juvenile for placement in the serious juvenile offender program under [WIS. STAT. §] 938.538 or the adult intensive sanctions program under [WIS. STAT. §] 301.048.

(d) The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in the court of criminal jurisdiction.

After reviewing these factors, the court must state its finding on the record, and, if the court determines that "it is contrary to the best interests of the juvenile or of the public to hear the case," the court shall enter an order waiving jurisdiction and referring the matter to the district attorney. Sec. 938.18(6). Waiver of juvenile jurisdiction under § 938.18 is within the sound discretion of the circuit court, and we will reverse the circuit court's determination on waiver "only if the record does

not reflect a reasonable basis for the determination or a statement of the relevant facts or reasons motivating the determination is not carefully delineated in the record.” *In re J.A.L.*, 162 Wis. 2d 940, 960-61, 471 N.W.2d 493 (1991). The circuit court has discretion as to the weight it gives each of the statutory criteria. *Id.* at 960.

¶4 In her appeal, Taylor specifically challenges the circuit court’s consideration of para. (c): the adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public. Taylor details the testimony of Neuenfeldt, who discussed treatment options available to Taylor within the juvenile justice system. Taylor focuses on one comment in the circuit court’s decision: “It does not make sense for this court to put her back into a system that has exhausted all programs and services, especially when Taylor doesn’t want to receive those services.” Taylor argues that there were many services within the juvenile system that had not been exhausted, including AODA treatment and Lincoln Hills. According to Taylor, this was an erroneous finding that renders the court’s waiver decision erroneous.

¶5 The State responds that the statute requires the circuit court to consider not all possible treatment alternatives, but only those that are adequate and suitable. This the court did, says the State, quoting the court’s decision:

AODA assessment was thought of but declined in this case because they didn’t think Taylor would take appropriate measures. That secure detention, electronic monitoring and in-home therapists have all been tried and failed. The Intensive Supervision Program has been done, and although successful, it appears as though that was based more on her primary goal to be off than any rehabilitation. The New Wilderness Camp was done, had good results, but did not last very long. I also fully believe the social worker when she says that Taylor will not respond to any treatment unless she wants to. There is treatment. And the big concern was raised with regard to

her education. That can be done in the juvenile system. The problem is if Taylor doesn't want to do it, there's very little you can do to force somebody to get an education.

The court later specifically rejected Lincoln Hills as an option, finding Neuenfeldt credible when she testified that she did not think Lincoln Hills would work in this case.

¶6 We agree with the State that the circuit court sufficiently addressed the adequacy and availability of services. Neuenfeldt testified about Taylor's treatment history, including an in-home therapist, New Visions Wilderness therapy camp, the Intensive Supervision Program, secure detention (two or three times), and electronic monitoring (at least three times). Neuenfeldt told of Taylor's refusal to follow the supervision rules and her continued truancy. Even in the face of the current delinquency petition about the burglary (Taylor's second burglary charge), Taylor continued to be noncompliant with her conditions of supervision. Given this background, it was not an erroneous exercise of discretion for the circuit court to conclude that some of the otherwise available options are not adequate and suitable for Taylor.

¶7 Taylor's counsel questioned Neuenfeldt at length about different programs in which Taylor could conceivably be placed. That does not mean that the circuit court had to individually address each of those options. The circuit court is not obliged by para. (c) to address every imaginable treatment option. The circuit court need only explain that it has considered the "adequacy and suitability of facilities, services and procedures available," not any and all facilities, services or procedures. Furthermore, the circuit court based its decision on the case as a whole, not just the para. (c) consideration of adequate and suitable services. After reviewing the other factors, the circuit court summed up its decision:

This is a serious charge. It's not the first time she has been involved in something similar to this. She's 16 years old. She'll be 17 next month. She's smart. She knows what she's doing. The Court finds that the potential for treatment is limited because of the time and what has been accomplished. The Court does believe that there was premeditation in this case and that Taylor has continued to disobey by missing school, having positive drug tests, and now committed another crime similar to the past, and that the past treatment, that is, secure detention and intensive sanctions programs, have not worked. Therefore, the Court does believe it is contrary to the best interest of Taylor and the public for the juvenile court to continue to hear this case. The Court will grant the petition and advise the State to refer this for criminal proceedings.

The circuit court's decision to waive juvenile court jurisdiction was not an erroneous exercise of discretion.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

